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November 24, 2003

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NOV 25 2003

Writer's Direct Contact
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U.S. PATENT & TRADEMARK OFFICE

By Hand Delivery

Office of the General Counsel
Attn: Solicitor of the U.S. Patent and Trademark Office
2121 Crystal Drive
Crystal Park 2, Suite 905
Arlington, VA 22202

Re: U.S. Patent Application Serial No. 08/412,114
Patent Interference No. 103,988

OFFICE OF THE
GENERAL COUNSEL
2003 NOV 25 AM 10:39
U.S. PATENT
AND
TRADEMARK OFFICE

Dear Sir:

The enclosed complaint, filed September 22, 2003, in the U.S. District Court for the District of Columbia in the case of Vas-Cath, Incorporated v. Curators of the University of Missouri (1:03cv1952) is being served upon you in your capacity to accept service for the Commissioner of Patents and Trademarks (MPEP §1216). The enclosed complaint commences a civil action under 35 U.S.C. §146 to remedy a decision and judgment of the Board of Patent Appeals and Interferences in Patent Interference No. 103,988. At issue in the civil action is whether the claims of U.S. Patent Application Serial No. 08/412,114, filed March 28, 1995, are patentable.

Therefore, in accordance with MPEP §1216, it is respectfully requested that prosecution of U.S. Patent Application Serial No. 08/412,114 be suspended during judicial review and until such time as the application may be remanded to the U.S. Patent and Trademark Office by the Court.

Very truly yours,



Alex Chartove
Registration No. 31,942

Enclosure

UNITED STATES DISTRICT COURT
District of Columbia

VAS-CATH, INCORPORATED,

Plaintiff,

V.

CURATORS OF THE UNIVERSITY OF MISSOURI,

Defendant.

SUMMONS IN A CIVIL CASE

CASE NUMBER 1:03CV01952

JUDGE: Paul L. Friedman

CASE NUMBER DECK TYPE: General Civil

DATE STAMP: 09/22/2003

TO: (Name and address of Defendant)

CURATORS OF THE UNIVERSITY OF MISSOURI
Columbia, Missouri 65211

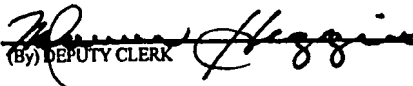
YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Bradley S. Lui
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006-1888

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

NANCY M. MAYER-WHITTINGTON
CLERK

SEP 22 2003
DATE

(By) 
DEPUTY CLERK

Return of Service in a Civil Action

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

☐ G Served personally upon the defendant. Place where served: _____

☐ G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ G Returned unexecuted: _____

☐ G Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____

Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Plaintiff(s)

v.

Defendant(s)

Civil Action No. 03 1952 PLF

**CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE FOR ALL PURPOSES**

In accordance with the provisions of 28 U.S.C. § 636(c)(3), the parties to the above-captioned civil matter by and with the advice of their counsel hereby voluntarily waive their rights to proceed before a District Judge of the United States District Court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial.

Attorney for the Plaintiff(s)

Date

Attorney for the Defendant(s)

Date

NOTICE: The foregoing Consent by Counsel shall be accepted upon the understanding that all counsel have secured the consent of their respective clients to the Consent and Referral to a United States Magistrate Judge for all purposes.

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to a United States Magistrate Judge for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c)(3) and the foregoing consent of the parties.

United States District Judge

Date

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ancy M. Mayer-Whittington
lerk of Court

**NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE**

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in the delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to trial of your case by a United States Magistrate Judge. By statute, 28 USC § 636(c), Fed.R.Civ.P. 73 and Local Civil Rule 73.1, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Civil Rule 16.3 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Counsel for the plaintiff has been furnished a copy of the "Consent to Proceed Before a United States Magistrate Judge for all Purposes" form. If and when the form is executed, your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form and with the approval of the District Judge, the case will be assigned to all purposes to a Magistrate Judge.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**INITIAL ELECTRONIC CASE FILING
ORDER**

This case has been designated for the Court's Electronic Case Filing (ECF) Program and this order will be docketed in that case.

ORDERED: that counsel shall:

- **File** within **24 hours**, the initial pleading in this case, in Portable Document Format (PDF) on a disk, or e-mail the filing to: **dcd_cmecf@dcd.uscourts.gov**. Counsel must also serve this Order and the e-filer registration forms on all parties in the case.
- **Register** to become an electronic filer by completing the ECF registration form and returning it to the Court. The Clerk's Office will EMail your ECF login ID and Password. If counsel has already registered in another case, do not register again.
- Electronically **File** all subsequent papers in this case.
- Have a **PACER** account (Public Access to Court Electronic Records), in order to view dockets and documents. If your office already has a PACER account, use that account. It is not necessary to have a CM/ECF account to view documents. Call 800-676-6856 or visit **www.pacer.psc.uscourts.gov** for additional information.
- **Check** the docket by entering the Court's CM/ECF Internet site (**www.dcd.uscourts.gov**), clicking on the **Case Management/Electronic Case Filing System** hyperlink, and logging in with your **PACER** login and password. Counsel is accountable for updates to the case.
- **Schedule training** within three weeks after the date of the initial filing. Contact Joe Burgess at (202) 354-3172, to schedule training. Filing instructions and an interactive tutorial can be found by entering the Court's Internet site (**www.dcd.uscourts.gov**) and clicking on the hyperlink to **Electronic Case Filing**.

CASE NUMBER 1:03CV01952
JUDGE: Paul L. Friedman
DECK TYPE: General Civil
DATE STAMP: 09/22/2003

FRIEDMAN, J. PLF
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC CASE FILES
Attorney/Participant Registration Form

LIVE SYSTEM

This form shall be used to register for an account on the Court's Electronic Case Files (ECF) system and to subscribe to the ECF EMail (Listserver) notification service. Registered attorneys and other participants will have privileges both to electronically submit documents, and to view and retrieve electronic docket sheets and documents for all cases assigned to the ECF system. Listserver subscribers receive email messages whenever the Court wishes to notify them of pertinent information.

First/Middle/Last Name _____

Last four digits of Social Security Number _____

DC Bar ID#: _____

Firm Name: _____

Firm Address: _____

Voice Phone Number: _____

FAX Phone Number: _____

Internet E-Mail Address: _____

By submitting this registration form, the undersigned agrees to abide by the following rules:

1. This system is for use only in cases permitted by the *U.S. District Court for the District of Columbia*. It may be used to file and view electronic documents, docket sheets, and notices. Please contact Joe Burgess at (202) 354-3172, to schedule training.
2. Pursuant to Federal Rule of Civil Procedure 11, every pleading, motion, and other paper (except list, schedules, statements or amendments thereto) shall be signed by at least one attorney of record or, if the party is not represented by an attorney, all papers shall be signed by the party. An attorney's/participant's password issued by the court combined with the user's identification, serves as and constitutes the attorney's/participant's signature. Therefore, an attorney/participant must protect and secure the password issued by the court. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney/participant to immediately notify the

court. This should include the resignation or reassignment of the person with authority to use the password. The Court will immediately delete that password from the electronic filing system and issue a new password.

3. An attorney's/participant's registration will not waive conventional service of a summons and complaint, subpoena, or other judicial process; submit the client to the jurisdiction of the Court; or operate as a consent to accept service of pleadings, documents, and orders in actions in which such attorney/participant has not entered an appearance. An attorney's/participant's registration will constitute a waiver in law only of conventional service of other non-process pleadings, documents, and orders in the case. The attorney/participant agrees to accept, on behalf of the client, service of notice of the electronic filing by hand, facsimile or authorized e-mail.
4. Attorneys must be active members of the bar of this Court to file pleadings electronically.

Please return this form to:

U.S. District Court for the District of Columbia
Attn: Attorney Admissions
333 Constitution Avenue NW, Room 1225
Washington, DC 20001

Or FAX to:

Joe Burgess
U.S. District Court for the District of Columbia
(202) 354-3023

Applicant's Signature

Full Last Name	Initial of First Name	Last 4 Digits SS#
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United States District Court for the District of Columbia Electronic Case Filing (ECF)

Congratulations! This case has been selected for Electronic Case Filing (ECF) and is now part of a new and exciting electronic case filing project. Using the Internet, ECF provides access to docket sheets and to most case documents. With ECF, documents may also be filed electronically over the Internet. Prospective users may go to the Court's ECF WebPage at <http://www.dcd.uscourts.gov/ecf.html> to learn more about ECF, view the ECF Users Manual, and conduct an ECF tutorial. Also, the Clerk's office provides training on the proper use of ECF and its procedures. If you wish to schedule ECF training, please contact Joe Burgess at 202-354-3172.

How Do I File Electronically?

Attorneys gain access to the Court's ECF system via the Internet and identify themselves by entering a Court-assigned user identification name and password. Next, attorneys must enter the case number for which their document is being filed, the name of the party for whom the document is being filed, and the type of document being submitted (motion, answer, reply, etc.). Then, the document is transmitted to the Court's server.

What Equipment Do I Need?

- A personal computer
- An Internet connection
- Netscape Navigator Version 4.X or Microsoft Explorer 5.X
- Adobe Acrobat (Version 3.0 or higher) or WordPerfect (Version 9.0 or 10.0)
- Document Scanner

How Do I Get Trained On ECF?

ECF Training is conducted every Tuesday and Thursday

- Times: 10AM or 2PM
- Duration: 1 to 2 hours
- Location: U.S. District Courthouse, First Floor
- Contact Joe Burgess at 202-354-3172, to schedule training.

Who Do I Contact If I Have Questions About ECF?

- | | |
|--|--------------|
| • Greg Hughes, Chief Deputy for Operations | 202-354-3191 |
| • Angela Caesar-Mobley, Operations Manager | 202-354-3181 |
| • Joe Burgess, Operations Manager | 202-354-3172 |

**The United States District Court
for the
District of Columbia**

Presents

ELECTRONIC CASE FILING TRAINING

**Every Tuesday and Thursday
10AM – 11:30AM
or
2PM – 3:30PM**

The United States District Court for the District of Columbia is directing attorneys to file documents electronically over the Internet in selected civil cases using the Court's new Electronic Case Filing (ECF) system. Eventually, all new civil cases filed with the Court will be ECF cases. In order to prepare attorneys for ECF, the Clerk's office is conducting ECF training classes every Tuesday and Thursday at the U.S. District Courthouse, 333 Constitution Avenue NW. Classes convene at 10 AM and 2 PM.

After completing an ECF class, attending attorneys and their staff will have sufficient knowledge and skills to successfully use the Electronic Case Filing system. ECF instructional topics include:

- Preparing documents for electronic filing
- Electronically filing documents
- Retrieving electronically filed documents
- Receiving notification of electronic filings
- Seeking help with electronic filing

Please call Joe Burgess at 202-354-3172, to schedule a training date and time at the District Courthouse. Seating is limited. Also, the Clerk's Office will deliver offsite training for attorneys and law firms at other times and locations. Contact Joe Burgess to discuss such an arrangement and the system requirements for offsite training.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Vas-Cath, Incorporated, a Canadian Company,
2 First Canadian Place
Toronto, Canada MSX 1J5

Plaintiff,

v.

Curators of the University of Missouri
316 University Hall
Columbia, Missouri 65211

Defendant.

CASE NUMBER 1:03CV01952

JUDGE: Paul L. Friedman

Civil Ac DECK TYPE: General Civil

DATE STAMP: 09/22/2003

COMPLAINT

Plaintiff, Vas-Cath, Incorporated ("Vas-Cath") for its complaint against Curators of the University of Missouri, states as follows:

THE PARTIES

1. Plaintiff Vas-Cath is a corporation organized and existing under the laws of Canada located at 2 First Canadian Place, Toronto, Canada MSX 1J5.
2. Defendant Curators of the University of Missouri is, on information and belief, a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at University of Missouri, Columbia, Missouri 65211.

THE NATURE OF THE ACTION

3. This is an action to remedy the decision and judgment of the Board of Patent Appeals and Interferences (the "Board") of the United States Patent and Trademark Office, as

provided for by 35 U.S.C. § 146. The interference proceeding relevant to this action is Patent Interference No. 103,988 (the "988 Interference"), entitled "Geoffrey S. Martin and Jonathan E. Last (Junior Party) v. Zyblut J. Twardowski, John C. Van Stone, and W. Kirt Nichols (Senior Party)."

JURISDICTION AND VENUE

4. Jurisdiction is based on 35 U.S.C. § 146 and 28 U.S.C. § 1338(a). Venue is proper in this judicial district under 35 U.S.C. § 146 and 28 U.S.C. § 1391.

FACTS GIVING RISE TO THE COMPLAINT

5. On or about August 19, 1997, the United States Patent and Trademark Office ("USPTO") declared an interference under 35 U.S.C. § 135(a) between United States Patent Application Serial No. 08/412,114, filed March 28, 1995 (the "Twardowski '114 application") and United States Patent No. 5,156,592, issued October 20, 1992 (the "Martin '592 patent"). This interference was designated in the USPTO as Patent Interference No. 103,988 (the "988 Interference").

6. The '988 Interference was originally declared on the basis of a single count, Count 1, which was a copy of Twardowski's claim 1, which reads as follows:

A catheter for hemodialysis which comprises a flexible catheter tube defining a plurality of separate lumens, said catheter defining an arc angle of generally U-shape in its natural, unstressed configuration, whereby said catheter may be implanted with a distal catheter portion residing in a vein of a patient, said distal catheter portion being of substantially the shape of said vein in its natural, unstressed condition, and a proximal catheter portion residing in a surgically created tunnel extending from said vein and through the skin of the patient, whereby blood may be removed from said vein through one lumen of the catheter and blood may be returned to said vein through another lumen of the catheter.

7. In his January 8, 2001 "Decisions on Motions," the Administrative Patent Judge ("APJ") *sua sponte* replaced Count 1 with Count 2 (the "Count"), which is the alternative combination of claims 1, 19 and 38 of the Twardowski '114 application, and which reads as follows:

A. A catheter for hemodialysis which comprises a flexible catheter tube defining a plurality of separate lumens, said catheter defining an arc angle of generally U-shape in its natural, unstressed configuration, whereby said catheter may be implanted with a distal catheter portion residing in a vein of a patient, said distal catheter portion being of substantially the shape of said vein in its natural, unstressed condition, and a proximal catheter portion residing in a surgically created tunnel extending from said vein and through the skin of the patient, whereby blood may be removed from said vein through one lumen of the catheter and blood may be returned to said vein through another lumen of the catheter.

or

B. A flexible catheter for prolonged vascular access, the catheter comprising: an elongate flexible and tubular body having a proximal portion, a distal portion and a permanently curved portion linking the proximal and distal portions so that the curved, the proximal and the distal portions lie naturally in essentially the same plane with the angle contained between the proximal and distal portions being less than 90°, and a septum extending continuously through said portions and lying substantially at right angles to said plane to divide the tubular body into generally D-shaped intake and outlet lumens; intake and outlet tubes coupled to the proximal portion at a proximal end of the body remote from the curved portion to receive incoming fluid from the intake lumen and to supply outgoing fluid to the outlet lumen; and a tip formed on the distal end of the distal portion and including at least one intake opening for receiving the incoming fluid and at least one outlet opening for returning the outgoing fluid.

or

C. A flexible catheter for prolonged vascular access, the catheter comprising: an elongate flexible and tubular body having a proximal portion, a distal portion and a permanently curved portion linking the proximal and distal portions so that the curved, the proximal and the distal portions lie naturally in essentially the same plane with the angle contained between the proximal and distal portions being less than 90°, intake and outlet tubes coupled to the proximal portion at a proximal end of the body remote from the curved portion to receive incoming fluid from the intake lumen and to supply outgoing fluid to the outlet lumen; and a tip formed on the distal end of the distal portion and including at least one intake opening for receiving the incoming fluid and at least one outlet opening for returning the outgoing fluid.

8. Plaintiff Vas-Cath and defendant Curators of the University of Missouri have an interest, as described below, in the '988 Interference.

9. Geoffrey S. Martin and Jonathan E. Last ("Martin et al.") are the first inventors of the subject matter claimed in claims 1-19 of the Martin '592 patent. The Martin '592 patent was filed in the USPTO on April 4, 1991, and is entitled under 35 U.S.C. § 119 to the priority benefit of the April 4, 1990 filing date of the earlier-filed Canadian Application No. 2,013,877 for the Count.

10. Martin et al. have assigned all rights in the Martin '592 patent to Vas-Cath. Vas-Cath is therefore the legal owner of the Martin '592 patent and of the entire right, title and interest in and to the inventions disclosed and claimed therein. Vas-Cath is the real party in interest for the purposes of this action. Vas-Cath is a wholly owned subsidiary of Bard Canada, Inc., a Canadian Company, which in turn is a wholly owned subsidiary of C.R. Bard, Inc., a New Jersey Corporation.

11. Zyblut J. Twardowski, John C. Van Stone, and W. Kirt Nichols ("Twardowski et al.") claim to be the first inventors of the subject matter claimed in claims 1 and 19-38 of the Twardowski '114 application. Twardowski et al. claim that the Twardowski '114 application is entitled to the benefit under 35 U.S.C. § 120 of the following three U.S. patent applications: 08/045,016, filed April 8, 1993, now U.S. Patent No. 5,405,320; 07/772,613, filed October 8, 1991, now U.S. Patent No. 5,209,723; and 07/461,684, filed January 8, 1990, now abandoned.

12. On information and belief, Twardowski et al. have assigned all rights in the Twardowski '114 application to the Curators of the University of Missouri. The Curators of the University of Missouri is the legal owner of the Twardowski '114 application and of the entire right, title and interest in and to the inventions disclosed and claimed therein. The Curators of

the University of Missouri is the real party in interest for the purposes of this action. On further information and belief, Quinton Instrument Company has derived rights in the application in interference from the Curators of the University of Missouri. On further information and belief Quinton Instrument's assets, including rights in the application in interference are now controlled by TYCO Healthcare Group, LP.

13. During the '988 Interference, Martin et al. filed Preliminary Motion A under 37 C.F.R. § 1.633(a) seeking judgment that claims 19-37 of the Twardowski '114 application are unpatentable to Twardowski et al. under 35 U.S.C. § 135(b). On January 8, 2001, Martin et al. Motion A was denied.

14. On July 30, 2003, the Board rendered its decision and judgment on the '988 Interference and erroneously reaffirmed its denial of Martin et al. Motion A and erroneously refused to hold claims 19-37 of the Twardowski '114 application unpatentable to Twardowski et al. under 35 U.S.C. § 135(b).

15. During the '988 Interference, Martin et al. filed Preliminary Motion C under 37 C.F.R. § 1.633(a) seeking judgment that claims 19-38 of the Twardowski '114 application are unpatentable to Twardowski et al. under 35 U.S.C. § 112, first paragraph. On January 8, 2001, Martin et al. Motion C was denied. Martin et al. subsequently filed a Request for Reconsideration with respect to the denial of Motion C. On February 13, 2001, Martin et al.'s Request for Reconsideration of Motion C was denied.

16. On July 30, 2003, the Board rendered its Final Decision under 37 C.F.R. § 1.658 and judgment on the '988 Interference (hereinafter "Final Decision") and erroneously reaffirmed its denial of Martin et al. Motion C and Request for Reconsideration of Martin et al. Motion C

and erroneously refused to hold claims 19-38 of the Twardowski '114 application unpatentable to Twardowski et al. under 35 U.S.C. § 112, first paragraph.

17. During the '988 Interference, Martin et al. filed a Motion to Consider Newly Discovered Prior Art, requesting that the APJ exercise his discretion under 37 C.F.R. § 1.641 in considering Canadian Patent No. 1,150,122 ("the '122 patent") with respect to the patentability under 35 U.S.C. § 102 and/or § 103 of the claims of the Twardowski '114 application. The new art in question, the '122 patent, issued on July 19, 1983 and lists as its sole inventor Geoffrey Martin. This patent was also assigned to Vas-Cath. On April 23, 2001 (paper 142), Martin et al. Motion to Consider Newly Discovered Prior Art was dismissed.

18. On July 30, 2003, the Board in its Final Decision erroneously declined to exercise its discretionary authority under 37 C.F.R. § 1.655(c) to consider whether the claims of the Twardowski '114 application are unpatentable: (a) with respect to the '122 patent either alone or in combination with other prior art under 35 U.S.C. § 102 and/or § 103 pursuant to Martin et al. Motion to Consider Newly Discovered Prior Art, or (b) with respect to priority evidence timely submitted by Martin et al. under 35 U.S.C. § 102.

19. On July 30, 2003, the Board in its Final Decision erroneously interpreted a term from the Count, namely, "generally U-shaped" and used said erroneous interpretation to erroneously hold that Martin et al. did not establish a constructive or actual reduction to practice of the invention defined by the Count.

20. On July 30, 2003, the Board in its Final Decision erroneously held that Martin et al.'s amended preliminary statement should be understood as reciting only joint inventorship by both Geoffrey S. Martin and Jonathan E. Last.

21. On July 30, 2003, the Board in its Final Decision erroneously held that an application filed in the USPTO (U.S. Patent Application Serial No. 06/254,019 ("the '019 application) and later abandoned cannot be used to establish a constructive reduction to practice of the invention defined by the Count where copendency is lacking. (Martin's Canadian application, which ultimately issued as the '122 patent, was also filed as a U.S. application in 1981 based on its Canadian priority date.)

22. On July 30, 2003, the Board in its Final Decision erroneously entered judgment against Martin et al. and erroneously determined that Martin et al. is not entitled to the Martin '592 patent claims which correspond to the Count.

23. Vas-Cath, as the assignee of the Martin '592 patent and as the real party in interest for the purposes of this action, is dissatisfied with portions of the Board's Final Decision adverse to Vas-Cath including: reaffirming prior rulings concerning Martin et al. Motion A, Martin et al. Motion C, Request for Reconsideration of Martin et al. Motion C, Martin et al. Motion to Consider Newly Discovered Prior Art; declining to exercise its authority to consider the unpatentability of the claims of the Twardowski '114 application; erroneously interpreting terminology from the Count; holding that Martin et al.'s amended preliminary statement should be understood as reciting only joint inventorship; that an application filed in the USPTO and later abandoned cannot be used to establish a constructive reduction to practice where copendency is lacking; the holding that Vas-Cath's SC-400 product is not an actual reduction to practice of the Count in interference, and that Martin et al. is not entitled to the Martin '592 patent claims which correspond to the Count.

24. No party to the '988 Interference has appealed the Board's decision to the United States Court of Appeals for the Federal Circuit.

25. Vas-Cath has commenced this action within two (2) months of the Board's decision of July 30, 2003 rendering a judgment in the '988 Interference.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Vas-Cath prays for a judgment:

A. Reversing the Board's judgment of July 30, 2003 against Martin et al. regarding: (1) Martin et al. Motion A, (2) Martin et al. Motion C, (3) Request for Reconsideration of Martin et al. Motion C, (4) Martin et al. Motion to Consider Newly Discovered Prior Art, (5) the exercise of the Board's authority to consider the unpatentability of the claims of the Twardowski '114 application, (6) the interpretation of terminology from the Count, (7) the holding that Martin et al.'s amended preliminary statement should be understood as reciting only joint inventorship, (8) the holding that an application filed in the USPTO and later abandoned cannot be used to establish a constructive reduction to practice where copendency is lacking, (9) the holding that Vas-Cath's SC-400 product cannot be an actual reduction to practice of the Count in interference, and (10) the holding which adjudged that Martin et al. is not entitled to the Martin '592 patent claims which correspond to the Count;

B. Reversing all portions of the Board's judgment of July 30, 2003 with respect to the '988 Interference which are adverse to Martin et al.;

C. Adjudging that Geoffrey S. Martin is the first inventor of the invention defined by the Count and that Vas-Cath is entitled to a Letters Patent of the United States for said invention;

D. Authorizing the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to award priority to Vas-Cath and to

reverse the judgment in favor of Curators of the University of Missouri, whereby priority as to the subject matter of the Count be awarded to Vas-Cath and to its inventors Martin et al.;

E. Determining that all claims of the Twardowski application corresponding to the interference count are unpatentable to Twardowski;

F. Entering judgment for Vas-Cath and against Curators of the University of Missouri in the '988 Interference;

G. Awarding Vas-Cath its costs pursuant to any appropriate provision of law; and

H. Awarding Vas-Cath such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

Dated: September 22, 2003

Respectfully submitted,

BRADLEY S. LUI, D.C. Bar No. 425033
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW, Suite 5500
Washington, D.C. 20006-1888
Telephone: (202) 887-1500
Facsimile: (202) 887-0763

ALEX CHARTOVE, D.C. Bar No. 396890
Morrison & Foerster LLP
1650 Tysons Boulevard, Suite 300
McLean, Virginia 22102
Telephone: (703) 760-7700
Facsimile: (703) 760-7777

By: 

Bradley S. Lui
Attorneys for Plaintiff

**United States District Court
For the District of Columbia**

VAS-CATH, INCORPORATED

Plaintiff

vs

CURATORS OF THE UNIVERSITY
OF MISSOURI

Defendant

Civil Action

CASE NUMBER 1:03CV01952

JUDGE: Paul L. Friedman

DECK TYPE: General Civil

DATE STAMP: 09/22/2003

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Vas-Cath certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Vas-Cath which have any outstanding securities in the hands of the public:

C.R. Bard, Inc.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Bradley S. Levi

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